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TRANSMITTAL FORM

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Application Number	09/919,302
Filing Date	July 31, 2001
First Named Inventor	Sarlay
Art Unit	3623
Examiner Name	Johnna Stimpak
Attorney Docket Number	

Total Number of Pages in This Submission: 4

ENCLOSURES *(Check all that apply)*

- ☐ Fee Transmittal Form
  - ☐ Fee Attached
- ☑ Amendment/Reply
  - ☑ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Response to Missing Parts/ Incomplete Application
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- ☐ Drawing(s)
- ☐ Licensing-related Papers
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- ☐ Other Enclosure(s) (please identify below):

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	David H. Judson
Signature	
Date	June 21, 2004

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Sarlay et al.
Serial Number:	09/919,302
Filing Date:	July 31, 2001
Art Unit:	3623
Examiner:	Johnna Stimpak
For:	**METHOD FOR FORECASTING AND MANAGING MULTIMEDIA CONTACTS**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO FINAL OFFICE ACTION

Applicants request reconsideration and withdrawal of the final rejection on grounds that the Examiner has failed to make out a *prima facie* case of obviousness, which is the Office's burden in the first instance.

In this regard, by its terms, the "rejection is based on the product of Pipkins" (emphasis supplied) as purportedly described in the conclusory statements set forth in a pair of product announcement press releases (dated December 23, 1999 and March 16, 2000) that accompanied the Office Action.

The press releases do not disclose any substantive details about the alleged "product of Pipkins." Presumably, this is why the Examiner elected to base her obviousness argument on the "product" itself. In particular, at the very least, there is no statement in either press release that meets the express limitations in claim 37, subsections (b) and (c)[1].

[1] In particular, clause 37(c) requires that "for a given future time of the forecast, applying a given function to the contact load to distribute the contact load for the given future time period over a given set of [...] number of time periods [that have been identified as a result of processing in step (b)]."

Because the press releases themselves are deficient, a *prima facie* case of obviousness cannot be established by arguing that the alleged product identified in those releases has "this or that" feature as the Examiner has done here. Any such conclusion is mere hearsay and lacks evidentiary foundation.

More to the point, the prosecution history now is devoid of any proof that any such Pipkins product existed at the time of the press releases or that such product, if it did exist, had the characteristics alleged in the press releases. Even if the "product of Pipkins" did exist – and there is no adequate proof of this – there still is no evidence that any such product had the specific functionality alleged to exist in the pending claims – clauses (b)-(c) in claim 37 being merely representative. This is the key deficiency in the Examiner's rejection.

Stated another way, the Examiner does not meet the Office's burden to establish a *prima facie* case of obviousness by arguing that a mere press release about a "product" (the release being silent as to how the product actually works) means that the product has (or must have) the features of the claimed invention. A press release announcing a product is not prior art as to the actual structural and functional characteristics of the product unless those characteristics are expressly described in the release. The claimed invention is not recited in the press release; indeed, if it were, there would be no reason to rely on the "product".

Before the "product of Pipkins" is deemed prior art, the Examiner must establish that the product itself was known or in public use before the Applicants' invention (35 USC 102(a)) or on sale or in public use before July 31, 2000 (35 USC 102(b)); then, the Examiner still must establish that the product actually had the characteristics positively recited in the claims. She has done neither. Accordingly, this factually and legally improper rejection must be withdrawn.

A Notice of Allowance is respectfully requested.

Respectfully submitted,

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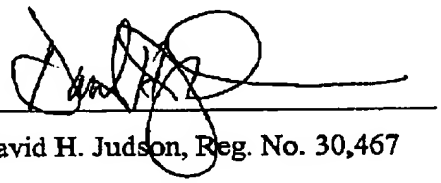
By: 

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